THE HON'BLE SRI JUSTICE B.PRAKASH RAO

AND

THE HON'BLE Dr. JUSTICE G.YETHIRAJULU

WRIT APPEAL Nos.1929 of 2002, 386 and 1076 of 2003

(Date: 09 -06-2006)

WRIT APPEAL NO. 1929 of 2002:

Between:

The Singareni Collieries Co. Ltd.,

(Government Company),

rep. by its General Manager,

Bellampally (PO),

Bellampalli – 504251,

Adilabad District and another.

….Appellants.

And

Vemula Rami Reddy,

S/o Veera Reddy,

Aged about 50 years,

Occ: Ex.-E.P. Greaser-D,

E.Code: 2050035,

R/o Qtr.No.608,

Bellampally Division, Goleti,

Adilabad District.

… Respondent

and two other cases.

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE Dr. JUSTICE G. YETHIRAJULU

WRIT APPEAL Nos.1929 of 2002, 386 and 1076 of 2003

COMMON JUDGMENT: (Per Hon'ble Sri Justice B. Prakash Rao)

Since common question involves in all these matters, the same are taken up together for disposal at the request of the counsel on either side.

The appeals in W.A.Nos.386 and 1076 of 2003 arise out of the orders passed at the instance of the contesting respondents/employees in the main W.P.Nos.1476 of 2000 and 12298 of 2002, dated 28.01.2003 and 25.11.2002 respectively. Though the appeal in W.A.No.1929 of 2002 arises at the instance of the Management as

against the interim order dated 22.07.2002 passed in W.P.M.P.No.16358 of 2002 pending the writ petition in W.P.No.13165 of 2002 suspending the orders of termination, the main writ petition itself is taken up for disposal at the request of the counsel on either side since the very same question is involved.

The facts undisputed in the appeal in W.A.No.386 of 2003 are that the contesting respondents 1 and 2, who are the writ petitioners, sought a writ of Mandamus assailing the orders of termination of their services on medical grounds without providing alternative employment as contemplated under the provisions of Section 47 of the Persons with disabilities (equal opportunities, protection of rights and full participation) Act, 1995 (for brevity 'the Act') and for necessary consequential directions. Admittedly, the first writ petitioner therein was initially appointed on 01.12.1991 and while in service he met with an accident on 30.08.1997. He was given medical treatment in the area hospital of the Company and thereupon, he was referred to Medical Board. On the basis of the findings of the Medical Board, his services were terminated w.e.f. 17.12.1997 by proceedings dated 23.12.1997. In respect of the second writ petitioner, he was appointed in the year 1995 and he met with an accident on 13.02.1999 who was also treated in the area hospital of the Company and again on the advice of the Medical Board, his services were terminated as per the proceedings dated 23.07.1999.

As regards the appeal in W.A.No.1076 of 2003, the respondent herein was the writ petitioner, who sought similar such relief of alternative employment under the aforesaid provisions of Section 47 of the Act on the ground that he joined the service of the Corporation as a Conductor on 31.05.1979. While in service, he was attacked

with paralytic stroke on 04.02.2001 and he was referred to the Corporation Dispensary at Tirupati. On the opinion given by the said Medical Officer, he was asked to go on leave and later on he was admitted in the Corporation Hospital at Taranaka, Hyderabad and later referred to NIMS, Hyderabad. Since on the basis of the medical report, he was retired from service by the orders dated 21.05.2002 in terms of Regulation 6 (a) (4) of APSRTC Employees (Service) Regulation 1964 on the ground that he was declared medically unfit for the post of Conductor. Hence, he sought for consideration of his case for the alternative employment under the aforesaid provision.

As regards the writ petition in W.P.No.13165 of 2002 out of which the other appeal in W.A.No.1929 of 2002 arises, the case of the writ petitioner, which has remained un-rebutted, is that since he was declared unfit for the post of Ex.E.P. Greaser, D-grade as per the proceedings dated 23.03.2002, his case required to be heard for the alternative employment under the aforesaid provisions of Section 47 of the Act. According to him, he was initially joined the service in the year 1981 and later on he was promoted to different posts. While in service and virtually at the time of working on 13.02.1999 in the first shift at 8.30 A.M. the dumper ran with speed crossing the drain and hit him due to stuck up of accelerator while he was giving signal to dumper to bring on to washing platform, as a result, he received injuries. He was treated in the main hospital for some time and ultimately declared unfit for service by the Medical Board as he is walking with two sticks in arm pits and not in a position to perform normal duties of E.P.Greaser Grade-D. Hence, he sought for consideration of his case for the alternative employment under the aforesaid provision.

Heard the counsel appearing for all the three appellants-Managements namely Sri K.Srinivasa Murthy in W.A.Nos.1929 of 2002 and 386 of 2003 and Sri P.Vinayaka Swamy in W.A.No.1076 of 2003 and the respective counsel appearing for the employees in these cases.

Considering the submissions made on either side and on perusal of the material available on record, the only question which arises for consideration is as to whether on the facts and circumstances the writ petitioners are entitled for alternative employment under Section 47 of the Act ?

The main ground of attack on the part of almost all the Managements is to the effect that these employees are not entitled to any such benefits more so when the Medical Board as contemplated to be constituted under the provisions of the very same Act did not satisfy the fitness of the respondents arise on account of the defects as contemplated and therefore, no indulgence need be shown in their favour. It is also their case that as against the orders of termination of the employees from service, they have got alternative remedy as provided for and to raise the dispute as contemplated under the Industrial Disputes Act. Hence, no writs could possibly be entertained under Article 226 of the Constitution of India.

Taking into account the admitted position in regard to the facts of each case and especially when there is no serious challenge as to the sufferance to which each of these employees were put to and which arose during the course of employment itself which has been certified by their own Officers and on the face of such chequered events and the certificates issued by themselves, it is too late in the day

as rightly pointed out by the learned single Judge to resile back or ask them to submit them before any Medical Board. In fact, we are in entire agreement with the observations of the learned single Judge to the effect that the job of the medical Board in this Act is only to verify the certificates possessed by the employees wherever there is serious dispute raised in regard to the correctness or genuineness of the claim. Since there is no dispute arising in all these cases, there is no necessity to go before any such medical Board and therefore, the said requirement under the said Act would not come into play. Coming to the other objections raised that the injuries or unfitness are not occurred during the course of employment which also cannot be countenanced on the admitted position that all these incidents were occurred only during the course of employment and not other-wise. Therefore, we are not prepared to accept any such contentions. In regard to the alternative remedy is concerned, *prima facie* we are of the opinion that having regard to the mandatory nature of benefit as sought to be conferred under the provisions of the aforesaid Act providing for alternative employment which is an umpteen formality and when there is no dispute arising as such in regard to the basic and jurisdictional facts touching upon the disabilities suffered, the only aspect which requires to be considered is as to when an employee suffers from such disability, the Management can straight away terminate him from service or consider his case for alternative employment under the provisions of the Act. In view of the same, neither it requires any enquiry nor correctness of the disabilities suffered when it is not being denied. Therefore, the only consequence which would follow is to place them well within the parameters of the aforesaid provision. Admittedly, in all these cases, the respective Managements have straight away passed orders terminating the services of the respondents-

employees. Therefore, the learned single Judge was absolutely right in giving the necessary directions for considering the cases of the writ petitioners' for alternative employment as contemplated under the Act. Hence, we do not find any justification in any of the grounds as sought to be urged on behalf of the Managements-appellants. Hence, we do not find any merits in the objections raised on behalf of the Managements-appellants nor any merits in the appeals or in the contentions as urged on its behalf.

In the result, all the three appeals are dismissed and the writ petition in W.P.No.13165 of 2002 is allowed and the impugned orders of termination in all these three cases are set aside and the respective Managements are directed to consider the case of the writ petitioners under Section 47 of the Act and pass orders in accordance with law within a period of four (4) weeks from the date of receipt of a copy of this order. No costs.

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B. PRAKASH RAO, J

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Dr. G. YETHIRAJULU, J

9th June, 2006.

Chvn.